

**Permitting and Assistance Branch Staff Report**  
New Solid Waste Facilities Permit for the Gregory Canyon Landfill  
SWIS No. 37-AA-0032  
July 8, 2011

**Background Information, Analysis, and Findings:**

This report was developed in response to the San Diego County Local Enforcement Agency (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed new Solid Waste Facilities Permit for the Gregory Canyon Landfill, SWIS No. 37-AA-0032, located in San Diego County, owned and operated by Gregory Canyon Limited. A copy of the proposed permit is attached. The report contains Permitting and Assistance Branch (PAB) staff's analysis, findings, and recommendations for consideration by the Acting Director in making his decision on the proposed permit.

The proposed new permit was received on May 16, 2011. Action must be taken on this permit no later than July 15, 2011. If no action is taken by July 15, 2011, the Department will be deemed to have concurred with the issuance of the proposed new permit.

**Proposed Permit**

The following are parameters to the proposed project:

	Proposed Permit
Days and Hours of Waste Receipt	Monday - Friday, 7:00 am to 6:00 pm Saturday, 8:00 am to 5:00 pm
Maximum Daily Tonnage/Maximum Annual Tonnage	5,000 tons per day/1,000,000 tons per year
Maximum Daily Traffic Volume	675 vehicles per day
Total Permitted Site/Disposal Footprint	308 acres/183 acres
Design Capacity	57,000,000 cubic yards
Estimated Closure Date	2040 (30 year site life)

	Proposed Permit
LEA Findings	<p>a) This permit is consistent with standards adopted by the Department of Resources Recycling and Recovery (CalRecycle). (Public Resources Code, Section 44010.)</p> <p>b) Pursuant to Public Resources Code Section 50001 (a)(1), this facility is a solid waste disposal facility identified and described on pages SE 44 - SE 46 in the county wide siting element, which has been approved pursuant to Public Resources Code Section 41721, (The 2005 5 Year Revision of the Countywide Integrated Waste Management Plan (CIWMP) was approved by the California Integrated Waste Management Board on September 20 - 21, 2005). A five year Review Report of the CIWMP was completed on March 23, 2011.</p> <p>c) The LEA has reviewed and considered the information, including the environmental effects of issuing this Solid Waste Facility Permit (SWFP) and finds the SWFP is consistent with and supported by the 2002 Final Environmental Impact Report (SCH#1995061007), 2007 Revised Final Environmental Impact Report, 2008 Water Supply Addendum, 2009 Additional Sources of Water Addendum, and 2010 United States Army Corps of Engineers updated jurisdictional determination Addendum.</p> <p>d) The LEA has determined that the design and planned operation of the facility is in compliance with the State Minimum Standards for Solid Waste Handling and Disposal, based on a review of the updated January 2011 Joint Technical Document.</p> <p>e) Facility shall be maintained in compliance with the flammable clearance provisions of Chapter 5, commencing with Section 4371 of Part 2 of Division 4 as enforced by the San Diego County Fire Authority (PRC Section 44151).</p>
Documents And CEQA References	<p>Joint Technical Document - January 2011</p> <p>Preliminary Closure/Post Closure Maintenance Plan - January 2011</p> <p>Final Environmental Impact Report (SCH#1995061007) - March 2007 Addendums (3) - July 2008; December 2009; May 2010</p> <p>Waste Discharge Requirements - pending</p> <p>Operating Liability - June 2010</p> <p>Closure Financial Assurance - October 2010</p>
LEA Conditions	<p>a) Without prior written or verbal approval from the LEA to allow otherwise, waste may be accepted only during the hours described in the most current Joint Technical Document (JTD).</p> <p>b) All quarterly self monitoring reports for the specified reporting periods shall be submitted to the LEA on the following due dates: January through March , due May 1; April through June, due August 1; July through September, due November 1; and October through December, due February 1.</p> <p>c) The operator shall prepare and submit annually (due September 1) a report regarding remaining capacity at the site.</p>

	Proposed Permit
	<p>d) Inspections of facility are random, unannounced and may occur before the start of or after the end of waste disposition activities.</p> <p>e) The operator shall maintain a copy of this Solid Waste Facility Permit and Joint Technical Document at the site at all times.</p> <p>f) The operator may utilize alternative daily cover as outlined in the most current JTD.</p> <p>g) The operator shall comply with all Mitigation Measures contained in the Mitigation Monitoring and Reporting Program (MMRP) and all other mitigation measures and project design features included as attachments to the permit application or described in the JTD. The operator may propose minor modifications to these Mitigation Measures/Conditions of Approval or project design features as allowed in Title 27, C.C. R. Article 3 (CIWMB-Enforcement Agency Requirements), including but not limited to Section 21665 (Processing Proposed Changes at Solid Waste Facility), and subject to the limitations contained in the California Environmental Quality Act (CEQA) with respect to changes that would necessitate supplemental environmental review [Pub. Resources Code, Section 21166, Title 14 C.C.R., Section 14000 et seq. (CEQA Guidelines), Sections 15162, 15163, 15164].</p> <p>h) Prior to commencement of operation, the owner/operator shall establish an Interim Citizen Environmental Review Panel (Panel). Establishment of the Panel shall not be conditioned by the execution of waste supply agreements as set forth in Proposition C (November, 2004). Participation on the Panel shall be open to any city or other governmental entity that notifies the owner/operator of its desire to participate, and each participating entity shall appoint its representative to the Panel. The Panel will meet at least annually, and more often as determined necessary by the Panel. The owner/operator shall provide qualified personnel to attend the Panel meetings, and shall provide accommodations for the Panel meetings. When two or more cities or other governmental entities agree to supply waste to the project, the Panel shall cease to exist and shall be replaced by a Citizen Environmental Review Board as required by and as set forth in Proposition C and in MM4.1.C5Q.</p> <p>i) Prior to commencement of landfill construction the owner/operator shall commit to participation in a Community Facility District or a Developer Agreement to address fire service.</p> <p>j) The construction-related mitigation measures for protecting biological resources (MM 4.9-5a, 4.9-5b and 4.9-12a) is required for the temporary storage yard used for landfill construction.</p> <p>k) If CalTrans does not timely proceed with the traffic mitigation project at the 1-15 and SR-76 interface described in MMRP measure 4.5-5, then prior to commencement of operations the owner/operator shall make an irrevocable offer to CalTrans to make a fair share payment toward the cost of any alternative traffic mitigation project CalTrans implements at that interface.</p> <p>l) Prior to commencement of operation and continuing thereafter, and subject to acceptance by CalTrans, the owner/operator shall provide such funds to CalTrans, as CalTrans is willing to accept, up to \$1,000,000 for traffic safety-related projects in the vicinity of Gregory Canyon. CalTrans</p>

	Proposed Permit
	<p>will determine specific projects. The owner/operator shall allow CalTrans to draw these funds in increments over time if CalTrans so determines. This requirement is in addition to all other road-related and traffic-related mitigation.</p> <p>m) The owner/operator shall reach a contractual agreement with the County Water Authority (CWA) concerning pipeline protection or relocation prior to the start of construction. For purposes of the required agreement with the CWA, relevant construction includes construction of the bridge over the San Luis Rey River.</p> <p>n) The operator shall offer to implement noise mitigation measures at residences located along SR 76 that are likely to experience an increase in noise of 0.1 dBA CNEL or more from project-generated traffic if the occupants of those residences are exposed to noise levels from traffic without the project that exceeds the County's standard of 60 dBA CNEL. These offers shall be made to each residence owner in writing just prior to the commencement of construction and if that offer is declined again between one and two years after the first acceptance of wastes at the facility. If an owner accepts the offer of mitigation and provides site access for construction, the project applicant shall install noise mitigation measures (e.g. sound walls, vegetative screens, sound-attenuating windows and doors, etc.) acceptable to the residence owner that are at least sufficient to offset the incremental noise impacts of project-related traffic, unless the residence owner will only consent to measures that are less effective.</p> <p>o) Prior to commencement of landfill construction, the operator shall provide the LEA a copy of the insurance policy it obtains to satisfy the insurance requirements contained in Section 9 of the First Supplement to the Water Supply Mitigation Agreement between the owner/operator and the San Luis Rey Municipal Water District.</p> <p>p) No significant change in design or operation of this facility shall be taken without prior application to and approval by the LEA (Public Resources Code §44004).</p> <p>q) Additional information related to compliance with this permit or information concerning the design and operation of this facility shall be furnished to LEA upon request.</p> <p>r) The Solid Waste Facility Permit is subject to review by the LEA and may be suspended, revoked or modified at any time for sufficient cause.</p>

### **Findings:**

Staff recommends concurrence with the issuance of the proposed new permit. All of the required submittals and findings required by Title 27, Section 21685 have been made and the required California Environmental Quality Act (CEQA) findings can be made in support of concurrence. The findings that are required to be made by the Department when reaching a determination are summarized in the following table. The documents on which staff's findings are based have been provided to the Acting Director with this Staff Report and are permanently maintained in the facility files maintained by the Permits and Certification Division.

CCR Title 27 Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated May 13, 2011.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(2) LEA Five Year Permit Review	This is a proposed new Solid Waste Facility Permit, therefore, the Five Year Permit Review is not applicable.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	The LEA submitted a proposed Solid Waste Facilities Permit on May 16, 2011.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685 (b)(4)(A) Consistency with Public Resources Code 50001	The LEA, in their permit submittal package received on May 16, 2011, provided a finding that the facility is consistent with PRC 50001 and Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction & Product Compliance Unit found the facility is identified in the Countywide Siting Element as described in their memo dated June 9, 2011.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(5) Preliminary or Final Closure/ Postclosure Maintenance Plans Consistency with State Minimum Standards	The Closure and Facility Engineering Unit staff in the Engineering Support Branch found the Preliminary Closure/Postclosure Maintenance Plans consistent with State Minimum Standards as described in their memorandum dated March 23, 2011.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(7)(A) Financial Assurances Documentation Compliance	The Financial Assurances Unit staff in the Permitting & Assistance Branch found the Financial Assurances Documentation in compliance as described in their memorandum dated May 17, 2011.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(7)(B) Operating Liability Compliance	The Financial Assurances Unit staff in the Permitting & Assistance Branch found the Operating Liability in compliance as described in their memorandum dated May 17, 2011.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations Consistent with State Minimum Standards	Department staff found that the information in the submitted Joint Technical Document will allow the proposed facility to comply with all state minimum standards. See compliance history below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on May 16, 2011, that the proposed permit is consistent with and supported by the existing CEQA documentation. See details below.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Informational Meeting was held by the LEA on February 23, 2011. Oral and written comments were received by the LEA staff. See details below.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

CCR Title 27 Sections	Findings	
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project, a proposed new Solid Waste Facilities Permit. Permits staff has determined that the CEQA record can be used to support the Acting Director's action on the proposed new permit. See details below.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

### **Compliance History:**

Department staff determined that the design and operations described in the submitted Joint Technical Document will allow the proposed facility to comply with all state minimum standards if it is implemented as described.

### **Project History:**

The following is a partial history<sup>1</sup> of the project and related actions:

San Diego County voters approved Proposition C in 1994, approving of a landfill located at Gregory Canyon, and rejected Proposition B in 2004, a proposition which would have overturned Proposition C.

The LEA after receiving an application for a solid waste facilities permit has acted as CEQA Lead Agency for the proposed. On February 6, 2003, Mr. Erbeck, as the Director of the LEA, certified a final Environmental Impact Report (EIR) for this project.

A proposed permit was approved by the LEA and was sent to the Department (which was then the California Integrated Waste Management Board or "Board") and was received on July 4, 2004. The applicant requested and was granted a series of waivers of statutory timelines for processing the permit which extended the deadline for required action on the permit to December 15, 2004. At the December 14, 2004 Board meeting, the Board failed to concur on or object to the issuance of the proposed permit. The final vote of 3 ayes, 2 nays and one abstention did not provide a majority vote for either course of action. Therefore, 60 days after having received the proposed permit, the Board was deemed to have concurred by operation of law, as provided by Public Resource Code Section 44009(a)(3). The LEA issued the Solid Waste Facility Permit on December 15, 2004.

The LEA's certification of the EIR and certain related actions were challenged in a Superior Court action entitled Riverwatch et al. v. County of San Diego Department of Environmental Health et al., case number GIN038227. On January 20, 2006, the Court issued a Preemptory Writ of Mandate directing the County of San Diego to set aside the February 6, 2003 certification and certain related actions.

The Court further directed the County to correct three deficiencies in the 2003 Final EIR, related to traffic, water supply, and biological mitigation. In 2006 the LEA provided additional analysis and developed additional mitigation in a Revised Partial Draft EIR which was circulated for public comment. The LEA evaluated and responded to all comments received, and a Revised

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<sup>1</sup> For more detail on the background and history of this facility, see "Gregory Canyon Landfill" on the San Diego County website: [http://www.sdcountry.ca.gov/deh/waste/chd\\_gregory.html](http://www.sdcountry.ca.gov/deh/waste/chd_gregory.html). The information on that website and the websites linked to it is incorporated herein by this reference.

Final EIR was prepared. The Revised Final EIR consists of the 2003 Draft Environmental Report (DEIR); the March 2007 Revised Partial Environmental Impact Report (RPEIR); Comments and Recommendations on the July 2006 Revised Partial Draft Environmental Impact Report (RPDEIR) circulated for comment in July and August of 2006; and LEA responses to comments. On May 31, 2007, Mr. Erbeck, as the Director of the LEA, determined that the RPEIR for the Gregory Canyon Landfill with associated comments and responses to comments met the direction of the Court.

On July 27, 2007, a solid waste application package for a modified permit was received by the LEA.

On August 27, 2007, the LEA determined the Gregory Canyon Landfill solid waste facility permit application package to be complete and correct.

On October 15, 2007, the LEA determined that the permit application package would be processed as a permit modification.

The applicant provided a series of waivers of the statutory timeline allowing the LEA additional time to process the application.

On February 11, 2008, the San Diego Superior Court issued a decision in *Riverwatch v. County of San Diego Department of Environmental Health*. This decision upheld the additional environmental analysis included in the Revised Final Environmental Impact Report for the proposed Gregory Canyon Landfill related to traffic and biological mitigation. The environmental analysis for the water supply (related to the use of reclaimed water) was found to be incomplete. The Court's decision required additional environmental analysis for the use of reclaimed water.

In response to the Court's order, the LEA staff did additional analysis. Baseline recycled water supply and use conditions were determined, and scenarios that added the Gregory Canyon Landfill to that baseline were defined and quantified. The impacts from recycled water deliveries to the landfill site on other Olivenhain Municipal Water District (OMWD) recycled water customers were then determined as required by the Court's order. The results of this analysis can be found in the [Addendum to the Certified Final Environmental Impact Report \(Recycled Water Addendum\)](#).

The Recycled Water Addendum concluded that there is adequate recycled water to meet the demands of OMWD's existing customers or existing uses of recycled water after including deliveries to the landfill site, and that the OMWD is able to provide 193 acre feet per year (AFY) of recycled water to the landfill site without causing a significant impact to its existing customers or existing uses of recycled water. Based on this information presented in the Recycled Water Addendum, no significant environmental impacts that were not identified in the 2003 FEIR or the Revised FEIR would result, and no previously identified significant impacts would be substantially more severe in light of this analysis.

On August 8, 2008, Gary Erbeck, as the Director of the San Diego County Local Enforcement Agency issued a decision which adopted the Recycled Water Addendum.

On November 20, 2008, the Superior Court dissolved the Preemptory Writ. Based on its review of the environmental documentation provided and the arguments of the litigants, the Court

concluded that the County of San Diego Local Enforcement Agency had met its obligations under CEQA.

On January 26, 2009 a lawsuit was filed by Riverwatch and the Pala Band of Mission Indians against the County of San Diego and Gregory Canyon, Ltd. The plaintiffs claimed that the 2004 Solid Waste Facility Permit for the landfill had been rescinded and therefore could not be modified. The Superior Court issued a decision in favor of the plaintiffs on June 14, 2010. In response to this decision, the applicant withdrew the application for a modified Solid Waste Facility Permit.

On June 25, 2010 an application package for a New Solid Waste Facility Permit was received by the LEA. The LEA accepted that application package as complete and correct on July 23, 2010.

On August 5, 2010, the LEA rescinded its complete and correct determination on the permit application package. On August 5, 2010, a request was submitted by Gregory Canyon, Ltd. to accept the June 25, 2010, application package as incomplete in accordance with 27 CCR 21580. The LEA accepted the package as incomplete giving the applicant until February 1, 2011 to submit revisions. On February 1, 2011, the LEA determined that the application package was complete and correct.

An informational meeting for the proposed permit was held in Fallbrook on February 23, 2011, at 6:30 pm in the Community Room at the Fallbrook Public Library. The meeting was attended by approximately 200 individuals and comments were received (for details see Public Comments, below).

On March 3, 2011, the LEA received a Request for Hearing before the local hearing panel in San Diego County from the Pala Band of Mission Indians. Gregory Canyon, Ltd. provided the LEA a waiver of statutory timelines for processing the permit application for 28 days. A hearing was scheduled for March 30, 2011. Shortly before the scheduled hearing, a member of the hearing panel withdrew, citing potential conflict of interest. The local hearing panel then refused to provide the hearing requested by the Pala Band. On April 28, 2011 the applicant provided another waiver of the statutory time period for processing the permit application timeline through May 13, 2011.

The LEA took action on this application on May 13, 2011, in accordance with the waiver of regulatory timeline from the applicant

Having been denied a hearing before the local hearing panel, the Pala Band of Mission Indians filed a request for a hearing before the Department on April 14, 2011 pursuant to Public Resources Code Section 45030(a). The Pala Band challenged the LEA's determination that the landfill operator's application for a permit was complete and correct. The Department held a hearing on June 13, 2011 and determined that the LEA had properly determined that the landfill operator's application for a permit was complete and correct.<sup>2</sup>

To provide interested citizens and organizations an opportunity within their community to comment on and submit information to the Department before it acted on the proposed permit for

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<sup>2</sup> The record of the proceedings before the Department may be found at <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=453&aiid=436> and are incorporated by this reference.



the landfill, the Department scheduled, noticed and conducted a public meeting on June 27, 2011, at 6:30 pm in the Community Room at the Fallbrook Public Library.

### **Environmental Analysis**

State law requires compliance with the California Environmental Quality Act either through the preparation, circulation and adoption/certification of an environmental document and mitigation reporting or monitoring program or by determining that the proposal is categorically or statutorily exempt. The San Diego County Department of Environmental Health, which is the LEA, is the Lead Agency under CEQA for this project and is responsible for preparing an environmental impact report and other documents required by CEQA. The Department is a Responsible Agency under CEQA and must utilize the environmental impact report prepared by the Lead Agency, absent certain circumstances not present here,<sup>3</sup> that would require the Department to conduct additional environmental review under CEQA.

The LEA has prepared the following environmental documents required by CEQA for the permitting and construction of Gregory Canyon Landfill:

- A Draft Environmental Impact Report, State Clearinghouse No. 1995061007 was circulated for a ninety-day comment period from January 26, 1999, through April 29, 1999 (although the State Clearinghouse website says it was circulated January 26, 1999, through March 12, 1999). The Draft Environmental Impact Report discussed the building of a lined solid waste landfill, access bridge, fee booth and scale area, recycling and collection area, cover soil stockpile area, leachate collection and sump system, stormwater retention facility, operations/office/maintenance area and the relocation of the San Diego Gas and Electric steel-tower power-line.
- A Revised Draft Environmental Impact Report, State Clearinghouse No. 1995061007 was circulated for a seventy-five day comment period from December 9, 1999, through February 22, 2000. Additional projected components were included in the revised environmental document in the areas of: inclusion of a reverse osmosis system for leachate treatment, increase in bridge length, operational changes in the use of a smaller borrow/stockpile area, engineered protection of the existing aqueduct and location of monitoring wells/probes.
- A Revised Draft Environmental Impact Report, State Clearinghouse No. 1995061007 was circulated for a forty-five day comment period from May 25, 2000, through July 10, 2000. Limited portions of the Revised Draft Environmental Impact Report were recirculated due to changes in analyses or new conclusions being drawn. The air quality and health risk analyses had been updated and revised. New conclusions had been proposed for project noise impacts to existing residences on SR 76, noise impacts to the vireo and flycatcher habitat on State Route 76 and cumulative traffic impacts.
- A Final Environmental Impact Report, State Clearinghouse No. 1995061007 was circulated by the San Diego County Department of Environmental Health on February 2, 2003 and certified on February 6, 2003.
- The Director of the San Diego County Department of Environmental Health, approved the project (the proposed solid waste facilities permit) and adopted a Statement of Overriding Considerations on June 2, 2004. The environmental effects that cannot be mitigated or substantially lessened and remain significant and unavoidable are, in summary:

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<sup>3</sup> See CEQA Guidelines, § 15096(e).

Traffic and Circulation:

Due to an uncertainty as to the timing of the widening of portions of State Route 76 between Interstate 15 and areas to the east of the landfill and widening the roadway in and around the landfill entrance, significant impacts, both project-related and cumulative, to SR 76 and I-15 are expected.

Air Quality:

Dust (PM 10) and NOx from the construction and operation of the landfill has been determined to be significant after the implementation of mitigation measures.

Ethnohistory and Native American Interests:

Physical alterations to Gregory Canyon will adversely affect Gregory Canyon cultural resources – Gregory Mountain and Medicine Rock, both of historical and cultural significance. The landfill will lie at the base of, and on the flank of Gregory Mountain. The landfill will be situated close to Medicine Rock, and will affect Native Americans' use of the Rock. Those impacts will be significant and are unavoidable, even with mitigation. Further, in the event that Gregory Mountain and Medicine Rock are listed on the National Register of Historic Places in the future, the project would have significant and unavoidable impacts on those two features.

Aesthetics:

Engineered landfill shape would dramatically contrast with surrounding natural landforms. Thus, even after mitigation, the aesthetic impacts of the project will be significant.

Noise and Vibration:

Project-related traffic noise will impact residences on SR 76, Camino del Sur and Camino del Norte. Noise walls that could reduce this impact would have to be constructed on private property and the owners of those properties have not consented to such sound walls. In that circumstance, the project will cause significant and unavoidable noise impacts.

Archeological and Cultural Resources: In the event that Gregory Mountain and Medicine Rock are listed on the National Register of Historic Places in the future, the project would have significant and unavoidable impacts on those two features. Further, and despite mitigation, Native Americans have explained that the development and operation of the project will interfere with these “traditional use sites,” resulting in significant and unavoidable impacts.

- A Notice of Determination was filed with the Office of Planning and Research on June 2, 2004, as required by 14CCR, Section 15094(c) where a local agency is the lead agency and the project requires discretionary approval from a state agency. The Notice of Determination indicated that the proposed project was approved by the Local Enforcement Agency and that the project would have a significant effect on the environment and that a Statement of Overriding Considerations was prepared and adopted for this project.
- A Supplemental Decision on the Proposed Solid Waste Facility Permit for the Gregory Canyon Landfill was prepared and executed by Gary W. Erbeck, Director of the LEA on

October 8, 2004. The core of the Supplemental Decision is a series of six enhancements to the project. There are no significant changes to the project; the six enhancements may lessen previously identified significant impacts:

1. Install a traffic signal at the intersection of SR-76 and the landfill access road.
  2. Irrevocable offer to contribute up to \$ 1.0 million dollars to Caltrans for safety improvements along SR-76 in the vicinity of the landfill.
  3. Add to the permit a requirement that the liner system for the proposed landfill be at least as protective as the double composite liner system described as Alternative B in the Final EIR and Gregory Canyon Landfill has committed to proposing a liner design to the California Regional Water Quality Control Board for the San Diego Region that will include an additional containment layer and an additional liquid removal system.
  4. Establish an interim citizen's review committee before Gregory Canyon enters into any agreements to accept solid waste from cities or other governmental entities.
  5. Arrange for an independent third-party to perform construction quality assurance/quality control by monitoring the construction of the landfill liner.
  6. Obtain a \$100 million dollars environmental liability insurance policy to ensure that additional financial resources are available to mitigate any significant release of contaminants from the landfill, including liability claims, remediation and water treatment of an alternative water supply.
- A Notice of Determination for the Supplemental Decision was filed by the LEA with the Office of Planning and Research on October 11, 2004.
  - An additional Notice of Determination for project changes was filed by the LEA on December 20, 2004 and the (former) Board filed a Notice of Determination as a Responsible Agency for the project on December 21, 2004.
  - A Revised Final EIR (RFEIR) addressing traffic, mitigation for impacts to biology, and water supply was prepared and certified in 2007, but a Notice of Determination was not filed. After another legal challenge, a court ordered additional analysis of water supply issues.
  - An Addendum to the RFEIR was adopted in 2008. It addressed water supply issues in response to the court order. Trial and appellate courts upheld the RFEIR with this Addendum. The RFEIR and this addendum cannot be further litigated.
  - Two more Addendums to the certified RFEIR have been prepared. One Addendum addressed additional sources of water and the impacts of using those sources, and the other Addendum addressed a new Jurisdictional Delineation completed by the U.S. Army Corps of Engineers

The California Department of Fish and Game, acting as a Responsible Agency, approved the portion of the project for which it has responsibility and filed a Notice of Determination with the State Clearinghouse on December 14, 2009.

The U.S. Army Corps of Engineers is currently preparing an Environmental Impact Statement (EIS) for the portion of the project within its responsibility in compliance with the National Environmental Policy Act (NEPA).

### **Significant Impacts and Lead Agency Statement of Overriding Considerations**

After conducting extensive environmental review under CEQA, the LEA, acting as Lead Agency, determined that the landfill project would cause significant adverse environmental impacts that could not be avoided or substantially mitigated. Those impacts are summarized above, on page 10 of this staff report, and are fully described in Chapter 11.0 of the 2003 Final EIR and, as revised, in Chapter 11.0 of the 2007 Revised Final EIR. With respect to its consideration of alternatives to the proposed project and the imposition of mitigation measures, a Responsible Agency is more limited than the Lead Agency. As a Responsible Agency, the Department is responsible “for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.” CEQA Guidelines, § 15096(g)(1). The specific aspects of the proposed project that the Department must consider are those requirements set out in Public Resources Code Section 44009 which provide the only grounds on which the Department can object to a proposed permit.<sup>4</sup> As set out in this staff report, the proposed permit satisfies all of those requirements. None of the project’s unavoidable significant impacts identified in the FEIR and RFEIR arise from the aspects of the project that the Department is authorized to act on. All of the unavoidable impacts except air quality impacts arise from the land use decision made by the county’s voters in Proposition C (1994) and Proposition B (2004) in locating the project at the proposed site. The unavoidable air quality impacts arise from locating the proposed facility in a region that is already suffering from air pollution and from the operation of the landfill. The Department has no authority to impose mitigation measures to reduce these impacts under its organic law, and CEQA does not convey authority beyond the Department’s organic law to address environmental concerns solely within other agencies’ jurisdictions. Indeed, the Department is precluded from imposing conditions on the solid waste facilities permit that the LEA has proposed.<sup>5</sup>

On May 13, 2011, the LEA adopted a Statement of Overriding Considerations (copy attached) in connection with its approval of the proposed solid waste facilities permit. By adopting its Statement of Overriding Considerations, the LEA determined that the project benefits outweigh its adverse environmental impacts. The LEA noted that the benefits from the issuance of a Solid Waste Facilities Permit are summarized as follows:

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<sup>4</sup> PRC Section 44009 provides, in pertinent part: (a)(2) If the board determines that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Sections 43040 [financial responsibility for liability arising from operations], 43600 [financial assurances for closure and postclosure maintenance], 44007 [timely notice of the proposed permit to the Department and the applicant], 44010 [conformance with standards adopted by the Department], 44017 [additional requirements for conversion facilities], 44150 [additional requirements for transformation facilities], and 44152 [additional requirements for transformation facilities] or Division 31 (commencing with Section 50000) [consistency with the county-wide integrated waste management plan], the board shall object to provisions of the permit....(c) The board shall not object to the issuance, modification, or revision of any solid waste facilities permit unless the board finds that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Section 43040, 43600, 44007, 44010, 44017, 44150, or 44152 or Division 31 (commencing with Section 50000) [emphasis added].

<sup>5</sup> PRC § 44007 [The LEA shall propose to the Department a permit with all of “the terms and conditions the enforcement agency proposes to establish.”]; PRC § 44014(b) [“The permit {that the enforcement agency issues} shall contain all terms and conditions which the enforcement agency determines to be appropriate for the operation of the solid waste facility.”]

- The Gregory Canyon Landfill provides additional disposal capacity in the County.
- The Gregory Canyon Landfill would implement Policy 2.2 and 2.5 and Tasks 2.5.1 and 2.5.2 of the Countywide Siting Element. The Gregory Canyon Landfill would increase competition among disposal sites and reduce waste tipping fees.
- The Gregory Canyon Landfill will add landfill capacity in the North County.
- The location and design of the Gregory Canyon Landfill offers opportunities to aid in limiting the emission of greenhouse gases and producing alternative energy.
- The Gregory Canyon Landfill project incorporates an enhanced liner system that may set a new and higher standard for landfill liners.
- Gregory Canyon Landfill will contribute \$1 million to Caltrans for safety improvements on SR-76 in the vicinity of the landfill.
- The Gregory Canyon Landfill will provide for open space preservation beyond the acreage required to mitigate project impacts.
- The Gregory Canyon Landfill will provide for additional on-site habitat creation and enhancement beyond the acreage required to mitigate project impacts.
- The Gregory Canyon Landfill Habitat Restoration is consistent with the goals of the draft North County Multi-Species Conservation Plan, and is consistent with continued development of the San Luis Rey River Park.

The permit includes LEA condition 17(g) which requires compliance with all mitigation measures. The project described in the proposed permit and Joint Technical Document is consistent with the project described and analyzed in the CEQA record. No new information relative to new or more severe impacts has been provided to staff. As with all solid waste projects, as additional approvals are processed by other regulatory agencies, the information in the Joint Technical Document may need to be changed in response to additional requirements placed on the project. The LEA processing a requested change will need to determine if the existing CEQA record supports the changes or if additional analysis will be required.

#### Department CEQA Findings

Staff has considered the environmental effects of the project as described in the FEIR, RFEIR and other environmental documents prior to reaching its recommendations on this project. Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the environmental documents prepared by the LEA as Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or to assume the role of Lead Agency for its consideration of the proposed solid waste facilities permit. Notably, no substantial changes have been proposed to the project which will require major revisions of the Final EIR, Revised Final EIR and other environmental documents adopted by the LEA, no substantial changes with respect to the circumstances under which the project is being undertaken that will require major revisions of the Final EIR, Revised Final EIR and other environmental documents adopted by the LEA, and there is no new information of

substantial importance relating to potential impacts and mitigation measures that was not known and was not reasonably knowable at the time the LEA certified the Final Revised EIR and approved the various Addenda to the EIR. See, CEQA Guidelines, §§ 15162 and 15163.

As described above, there are no alternatives or mitigation measures that the Department can impose that would further lessen or avoid the significant effects of the project due to the limited scope of the Department's authority and due to the fact that the impacts arise from aspects of the project which the Department does not carry out, finance or approve. To the extent they relate to matters within its jurisdiction, the Department adopts as its own the findings made by the LEA, as Lead Agency, with respect to each of the project's significant environmental effects.

Because all of the project's impacts cannot be avoided or substantially reduced, before concurring on the issuance of the proposed permit, the Department must adopt a Statement of Overriding Considerations that indicates its reasons for overriding the adverse environmental effects caused by the proposed project. It is Department staff's recommendation that the Department adopt as its own the Statement of Overriding Considerations as adopted by LEA to the extent the unavoidable significant environmental effects of the Project identified in the Statement of Overriding Considerations relate to environmental effects caused by the Department's exercise of its Statutory Authority. In addition to the rationale provided by the LEA in adopting its Statement of Overriding Considerations, the Department is obliged to give very substantial weight to the determination made by the voters of San Diego County, twice, to situate the proposed landfill in its proposed location. While project opponents have alleged that these initiative processes were flawed, the Department has no authority to alter or disregard these legally valid determinations regarding the siting of this facility.

Department staff further recommends the Final Environmental Impact Report, with all other CEQA documents adopted by the LEA, and with the inclusion of the Statement of Overriding Considerations, is adequate for the Acting Director's environmental evaluation of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed SWFP and all of its components and supporting documentation, this staff report, the EIR and other CEQA documents adopted by the LEA as Lead Agency, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed SWFP. The custodian of the Department's administrative record is Dona Sturgess, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

#### **Local Issues:**

The project documents availability, hearings, and associated meetings were extensively noticed, consistent with Solid Waste Facilities Permit requirements. The site is located in Census Tract 191.01 in the Pauma Valley. Census 2000 information for the Census Tract 191.01 indicates that the surrounding population is not predominantly made up of minority groups, as 55.4% of the population is white, 1.1% is black, 2.3% Asian, 19.8% American Indian or Alaska Native, 0.1% Native Hawaiian and Other Pacific Islander, 17.9% Some Other Race, and 3.4% reported as Two or More Races. 38% identified as Hispanic or Latino. Additionally, 7.8% of the families were below the poverty level and 10.1% of the individuals in Census Tract 191.01 were below the poverty level. Staff has not identified any evidence of environmental justice issues related to this item. Staff finds the project and permit process to be consistent with Government Code

Section 65040.12, as there has been fair treatment of people of all races, cultures, and incomes with respect to the proposed action being recommended above.

**Public Comments:**

The proposed permit was discussed at a public informational meeting held on February 23, 2011, at 6:30 pm at the San Diego County Public Library, 124 S. Mission Road, Fallbrook, CA, 92028. Approximately 200 people attended the meeting. 35 individuals provided oral comments on the project. In addition to comments provided verbally at the Informational Meeting, written comments were also received at the Informational Meeting, by mail, and by e-mail. Many of the commenters had multiple concerns. Because of the volume of comments received, the LEAs summary and response to comments is attached to this staff report. In addition, staff have included the following summary of the comments:

- **Water:** A variety of comments were received on water-related issues including groundwater, surface water and storm water. Most of these comments stated that the facility was not properly designed to protect water sources. Comments also focused on the proximity of the project to the San Luis Rey River, and the concept that the water in the San Luis Rey River would be threatened with contamination from landfill operation and that this in turn would impact drinking water supplies. Several comments including one from the County Water Authority were related to protection of the aqueducts that run through the property.
- **Location:** Comments were received stating that the location did not meet standards that may have been previously used to identify potential landfill locations. The area close to the San Luis Rey River was also cited as a bad location for a landfill.
- **Capacity:** Commenters stated that based on current and future recycling rates and reductions in the current rates of solid waste generation; there was no need for additional landfill capacity and therefore no need to build a landfill at this location.
- **General Opposition:** Many comments included a statement of general opposition to the project.
- **Cultural / Environmental Justice:** Commenters stated that based on the proximity to sites held sacred by Native Americans the landfill should not be constructed in this location. Comments included that the location of the landfill presented environmental justice issues.
- **Biology:** Commenters stated a variety of concerns for Biological and Natural Resources in the canyon that would be impacted by siting a landfill at the proposed location.
- **Traffic:** General comments were received on the negative impacts of an increase in traffic on an already busy two lane stretch of highway that would be inadequate to support the increased traffic associated with the landfill.
- **General Support:** Several commenters included a statement of general support for the proposed project.

- **Financial:** There were several general comments made that the project was just being proposed to make a profit for the owners of the property.
- **Geology:** Several commenters suggested that seismic evaluations were not adequate considering the steepness of the slopes proposed for the landfill and the proximity of the site to the Elsinore and San Andreas faults.
- **Noise:** Comments were made in general terms about the negative impacts of noise from the project.
- **Permit Application Completeness:** A letter from Procopio stated with various examples that the permit application package was incomplete and should not move forward.
- **Air / Greenhouse Gas:** General comments were received on negative impacts of the facility on air quality. Several comments were received on the issue of greenhouse gas generation by the decomposition of solid waste in the landfill and its effect on global climate change, and on the absence of Greenhouse Gas analysis in the CEQA studies for the project.
- **Fire Protection:** Comments received that the discussion of fire protection in the permit package were inadequate.
- **Liability:** Comments requesting long term liability insurance for the facility.
- **Out of County Waste:** Commenters were concerned that the landfill would receive waste from areas outside the County of San Diego.

Staff have reviewed all the comments. Staff find that the LEA has adequately responded to the comments.

A meeting was scheduled, noticed and conducted by the Department on June 27, 2011, at 6:30 pm in the Community Room at the Fallbrook Public Library, see attached transcript. Staff have reviewed all the comments received at the meeting as well as comments provided in writing and find that they have all been addressed or are not within the Department's jurisdiction.

#### **Department Staff Actions:**

PAB staff has worked with the LEA throughout the permit process by providing secondary review and comments on documents and has attended public meetings where the project was discussed. On June 27, 2011, the Department held a workshop at the Fallbrook Community Library to provide an update on the permitting process to interested parties.

#### **Staff Recommendation:**

On the basis of the facts and analysis set out above and the additional facts and analysis in the balance of the record of this matter, staff recommends that the Acting Director of the Department consider the FEIR and RFEIR and other environmental documents, adopt the LEA's findings respecting the project's significant impacts as the Department's own, adopt the LEA's Statement of Overriding Considerations as the Department's own and concur in the proposed solid waste facilities permit.